



TEXAS STATE BOARD OF PHARMACY

Michael Lester, R.Ph.
President
Dallas

Ann H. Peden, R.Ph.
Vice President
Hondo

Thomas A. Aday, R.Ph.
Treasurer
Plainview

Charlie Bellinger Bethea, R.Ph.
Houston

Jeanette H. Cuffield
Lasper

David L. Franklin, R.Ph.
Dallas

Jerry D. Pyle, R.Ph.
Arlington

Charles L. Rittenberry
Amarillo

Marina P. Sifuentes, R.Ph.
Austin

Fred S. Brinkley, Jr., R.Ph.
Executive Director/Secretary
Austin

RQ-447

October 2, 1992

Dan Morales
Office of the Attorney General
209 W. 14th Street
Price Daniel, Sr. Building, 7th Floor
Austin, TX 78701

Attn: Madeline Johnson, Chairman
Opinions Committee

Dear Ms. Johnson:

The Texas State Board of Pharmacy ("TSBP") is requesting your opinion regarding whether certain TSBP funds are exempt from provisions of Senate Bill 3 relating to funds consolidation. Specifically, do funds deemed to be "outside the state treasury" by the Texas Pharmacy Act fall within the Senate Bill 3 exemption for "funds outside the treasury?"

The Texas State Board of Pharmacy believes that such funds are exempted from consolidation under the provisions of Senate Bill 3 and Section 17(g) of the Texas Pharmacy Act. However, the Office of the Comptroller of Public Accounts has indicated that TSBP funds maintained at Nations Bank of Austin might be included in a recommendation for funds consolidation under Senate Bill 3.

Senate Bill 3 was enacted by the 72nd Legislature, First Called Session, and codified in Chapter 403 of the Government Code. It provides, in part:

Sec. 403.094. CONSOLIDATION OF FUNDS; ABOLITION OF DEDICATIONS.

(a) The comptroller, with the concurrence of the treasurer, may abolish any fund or account in existence on or before August 31, 1993. The money in the abolished funds or accounts shall be merged, combined, or segregated into the general revenue

MBJ
ID # 17562
file # ML-17562-92

RECEIVED

OCT 9 6 92

Opinion Committee

RECEIVED

OCT 12 1992

Opinion Committee

fund or other funds as determined by the comptroller under Subsection (e). The comptroller may establish accounts in the general revenue fund or other funds to identify each source of revenue.

X X X X

(j) This section does not apply to:

(1) funds outside the treasury;

X X X X

Sec. 403.095. USE OF DEDICATED REVENUE.

(a) Notwithstanding any action taken by the comptroller under Section 403.094, revenue that has been set aside by law for a particular purpose or entity is available for that purpose or entity to the extent money is appropriated for that purpose or entity. Expenditures made in furtherance of the dedicated purpose or entity shall be made from money received from the dedicated revenue source to the extent those funds are appropriated.

X X X X

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, at the end of a biennium, exceed the amount appropriated are available for general governmental purposes. This subsection does not apply to revenues in:

(1) funds outside the treasury;

X X X X

Tex. Gov't Code Ann. §§ 403.094, 403.095 (Vernon Supp. 1992) (emphasis added).

This mandatory exemption language does not define "funds outside the treasury." However, Section 17(g) of the Texas Pharmacy Act does. It provides:

(g) Revenue, other than fines, collected under this Act constitutes a fund outside the state treasury from which the expenses of administering this Act are paid. Money in the fund may not be expended except pursuant to specific legislative appropriation in the General Appropriations Act. An appropriation is not required for the investment of the fund by the board and for payment of customary fees or charges in connection with the investment. Investment income shall be deposited in the fund. The fines collected under this Act shall be deposited to the credit of the general revenue fund and may not be used for the administration of this Act. The board shall defray all expenses under this Act from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the board, or its officers or employees, or any other expenses thereof. The board's books and records are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Tex. Rev. Civ. Stat. Ann. art 4542a-1, § 17(g) (Vernon Supp. 1991) (*emphasis added*).

Revenues from licensing fees and investment income (not fines) are deposited by TSBP into a fund as directed by Section 17(g) of the Texas Pharmacy Act. This fund is maintained at Nations Bank of Austin. Money in this fund is only expended pursuant to specific legislative appropriation; again, as directed by Section 17(g) of the Texas Pharmacy Act. Section 17(g) of the Texas Pharmacy Act directs that this is a "fund outside the state treasury."

It should be noted that the fund maintained in Nations Bank of Austin is subject to appropriations oversight, as set forth in Section 17(g) of the Texas Pharmacy Act. The apparent legislative intent of Senate Bill 3 was to provide such oversight where it is lacking, not where it already exists.

Finally, the impact of funds consolidation on TSBP would be significant. TSBP would lose any interest it currently accrues at Nations Bank of Austin. TSBP has accrued interest ranging from \$30,586 in FY89 to \$19,275 in FY91. This amount, although not reappropriated to the Agency, is used to finance future appropriations. If this source of revenue is lost, licensure fees must be raised to cover that loss.

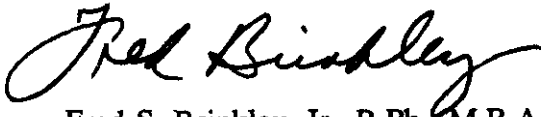
Dan Morales
October 2, 1992
Page 4

Under Senate Bill 3, "funds outside the treasury" are exempt from consolidation. Accordingly, the fund maintained by TSBP at Nations Bank of Austin is exempt from consolidation under the explicit language of both Senate Bill 3 and Section 17(g) of the Texas Pharmacy Act.

As a final note, TSBP may assess fines in disciplinary actions under the Texas Pharmacy Act. TSBP deposits all fines to the credit of the general revenue fund, as directed by Section 17 (g) of the Texas Pharmacy Act. Those funds are not "outside the state treasury," and are therefore not at issue in this opinion request.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Brinkley".

Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary

FSB:BP/dp

cc: Board Members

Comptroller of Public Accounts
Attn.: Mr. Jerry W. Neef

Michelle Dains
Assistant Attorney General